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No. 00-876

IN THE

Supreme Court of the United States

JOHN CHRISTO, JR., JOHN CHRISTO, III, JAMES PHILLIP CHRISTO, and IRENE LAURETTE CHRISTO,

Petitioners,

v.

KENNETH EARL PADGETT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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ISSUES PRESENTED

I. WHETHER THIS COURT LACKS JURISDICTION OVER THIS PROCEEDING UNDER ARTICLE III, § 2 OF THE UNITED STATES CONSTITUTION

II. WHETHER THIS COURT LACKS JURISDICTION TO REVIEW THE DISTRICT COURT'S REFUSAL TO REMAND *CHRISTO v. PADGETT* TO STATE COURT

III. WHETHER THE DISTRICT COURT ADDRESSED THE MERITS OF THE STATE ACTION BEFORE IT HAD SATISFIED ITSELF OF ITS JURISDICTION OVER THE SUBJECT MATTER AND WHETHER THE ELEVENTH CIRCUIT EVEN ADDRESSED THIS ISSUE

IV. WHETHER THE ELEVENTH CIRCUIT'S OPINION AFFIRMING THE DISTRICT COURT'S DISMISSAL OF THE PETITIONERS' STATE LAW ACTION IN WHICH A JURY TRIAL WAS REQUESTED DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY CONFLICTING WITH DECISIONS OF THIS COURT

PARTIES TO THE PROCEEDING

Petitioners fail to list as a party William J. Miller ("Miller"), as trustee in bankruptcy for John Christo, Jr. ("Christo, Jr.") and they seek no relief against Miller in their Petition. Because Petitioners seek no relief against Miller, it is Respondent's position that the Petitioners lack standing to pursue this appeal, that this Court is unable to grant any effective relief, and that this Court therefore lacks jurisdiction over this Petition. Although these points are dealt with in the Argument portion of this Brief in Opposition, a brief discussion of the alignment of the parties in the consolidated cases below is appropriate.

The Eleventh Circuit opinion underlying this appeal involved two cases, one originating in the United States Bankruptcy Court for the Northern District of Florida and the other originating in Florida state court. The state court action was removed to the United States District Court for the Northern District of Florida. The Petitioners appealed to the Eleventh Circuit from dispositive orders and judgments in both actions, and the Eleventh Circuit consolidated the Petitioners' appeals.

Miller was involved in the *bankruptcy* case styled *In re John Christo, Jr.*, Case No. 98-3663 below, because the primary protagonist in the lower courts, John Christo, Jr. ("Christo, Jr."), is a debtor in a still pending chapter 7 bankruptcy case which Christo, Jr. filed on February 16, 1994. Miller is the trustee in bankruptcy for the estate of Christo, Jr. In that capacity, Miller has consistently claimed to be the owner of the cause of action asserted by Petitioners against the Respondent, Kenneth Earl Padgett ("Padgett") in the other of the two consolidated cases, *Christo v. Padgett*,

Case No. 98-3577 below. Miller actively participated in all proceedings in the *bankruptcy* case at both the trial and appellate levels. In the *bankruptcy* case, the district court determined, after withdrawing the reference from the bankruptcy court and following an evidentiary hearing, that Miller was in fact the owner of the cause of action against Padgett and that none of the Petitioners had any interest in that cause of action. A-37. Following a recommendation from the bankruptcy court, A-59, the district court also approved a settlement between Padgett and Miller that released Padgett from any liability for claims asserted in *Christo v. Padgett*. A-68.

Miller was not directly involved in *Christo v. Padgett*, Case No. 98-3577 below. Miller, however, is in fact the only real party in interest on the Plaintiffs' side in that action since he has been determined to own it.

The district court's order determining that Miller owned the cause of action against Padgett and its order approving the settlement, both of which were entered in the underlying *bankruptcy* case, were affirmed by the Eleventh Circuit (A-25-26). These orders are not challenged by Petitioners in the Petition.

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STATEMENT REGARDING JURISDICTION

Petitioners raise two issues in their Petition. First, they contend that the district court erred in declining to remand *Christo v. Padgett* to the state court and that, while never actually reaching this issue, the Eleventh Circuit nevertheless erred in "permitting" the district court to do so. Second, they contend that the Eleventh Circuit erred in affirming the district court's dismissal of the removed action.

This Court lacks jurisdiction over both issues because there is no case or controversy under Article III, § 2 of the United States Constitution. It lacks jurisdiction over the first issue under 28 U.S.C. § 1334(c)(2) (1994) for the reasons set forth in the Eleventh Circuit's opinion. The jurisdictional issue is further discussed in the Argument portion of this Brief in Opposition.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article III Section 2 to the United States Constitution provides as follows:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another

> State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

The version of 28 U.S.C. § 1334 in effect when Christo, Jr. filed his bankruptcy case, 28 U.S.C. § 1334(1994)[1] provided as follows:

> (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
>
> (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.
>
> (c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

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1. 28 U.S.C. § 1334 was amended after Christo, Jr. filed his chapter 7 case on February 16, 1994. In a ruling not challenged by Petitioners, the Eleventh Circuit held that the former statute applied to the cases at bar. The amended version, although not applicable to this proceeding, is quoted in the Petition.

> (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain or not to abstain made under this subsection is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under 1254 of this title. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.
>
> (d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

28 U.S.C. § 1452 was in effect on February 16, 1994 and which has remained unaltered to date, provides as follows:

> (a) A party may remove any claim or cause of action in a civil action other than a proceeding

before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

STATEMENT OF THE FACTS

Although the factual and procedural background of this case is extraordinarily complex, spanning a decade of litigation in civil, criminal and bankruptcy courts, the relevant facts and procedural background were well summarized by the district court and the court of appeals. In its simplest terms, this case represents an effort of Christo, Jr., who has been convicted of felony bank violations in connection with his stewardship of Bay Bank, to enforce an alleged oral contract or trust agreement with the Respondent, Kenneth Earl Padgett, related to the stock of Bay Bank. The Bay Bank stock had been pledged to SouthTrust Bank to secure loans that were in default, and SouthTrust Bank had sued Christo, Jr. and others to foreclose their lien on the stock. Padgett outbid SouthTrust Bank and was declared to be the

high bidder at the September 1993 auction of the Bay Bank stock ordered by the United States District Court for the Northern District of Florida. Padgett's offer was subsequently approved by the same court in two separate judicial proceedings. A-42-44. Petitioners, Christo, Jr. and Christo, III, were parties to at least the first of these proceedings. As noted earlier, Christo, Jr. filed a Chapter 7 bankruptcy case (also filed in the Northern District of Florida) on February 16, 1994 after the court-ordered auction but before closing of the sale of the Bay Bank stock.

Although the alleged oral agreement with Padgett was supposedly formed prior to his chapter 7 bankruptcy petition, Christo, Jr. never listed it as an asset in his bankruptcy schedules in violation of his obligations under the Bankruptcy Code. 11 U.S.C. § 521. The alleged agreement was never reduced to writing, and Christo, Jr. never made any demand that Padgett honor this alleged agreement prior to his November 1997 suit. Padgett has consistently denied the existence of any such agreement since it was first alleged (not by Petitioners, but rather by SouthTrust Bank) in November 1993.

When Christo, Jr. filed his chapter 7 petition on February 16, 1994, Padgett had not yet received federal regulatory approval of his proposed ownership of Bay Bank. Consequently, on that date, all of the stock of Bay Bank was owned by Florida Bay Banks, Inc.[2] the preferred stock of which was in turn predominantly owned by Christo, Jr. Christo, Jr.'s children also owned stock in Florida Bay Bank, Inc.

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2. As noted earlier, Florida Bay Banks, Inc. had pledged all of the stock of Bay Bank to SouthTrust Bank.

Christo, Jr. *did* disclose the ownership of his large stock interest in Florida Bay Banks, Inc. in his bankruptcy schedules, thus alerting his trustee, Miller, of the existence of this asset. Soon thereafter, Miller learned of Padgett's court-approved contract to buy the stock of Bay Bank for $8.5 million. When Padgett subsequently received regulatory approval for his acquisition of Bay Bank, Miller promptly sought and obtained bankruptcy court approval to collect and deposit the net proceeds from the sale of Bay Bank to Padgett in April 1994. Neither Christo, Jr. nor his children objected to the sale to Padgett. Padgett paid the $8.5 million purchase price in April 1994 and received the stock of Bay Bank at that time.

From the $8.5 million proceeds, the claim of SouthTrust Bank that was secured by the Bay Bank stock was paid, and Miller deposited the balance in an account controlled by him. Miller subsequently invoked the jurisdiction of the United States Bankruptcy Court for the Northern District of Florida by filing a chapter 11 petition on behalf of Florida Bay Banks. The Christo children actively participated in this case. As the district court noted, the Petitioners benefitted from the consummation of the contract with Padgett by more than $3 million. A-43.

At the time that Padgett paid the $8.5 million purchase price, there was no claim or assertion by the Petitioners that Padgett was acting for the benefit of them or of anyone other than himself. Indeed, in a massive display of cynicism, the Petitioners freely admit that Padgett would never have obtained the regulatory approval of federal banking officials if the Petitioners did in fact have any continuing interest in Bay Bank.

Following consummation of the sale in April 1994, Padgett treated the stock of Bay Bank as his own and took control of its business affairs. According to Petitioners, under Padgett's management the value of the Bay Bank stock had increased to approximately $25 million by November 1997.

Although Christo, Jr. did not schedule the cause of action against Padgett as an asset of his bankruptcy estate, Miller had accidentally become aware of the existence of an asserted claim against Padgett while Miller was engaged in administering the related chapter 11 case of Florida Bay Banks, Inc. Immediately before the expiration of the two-year statute of limitations imposed by 11 U.S.C. § 546(a)(1), Miller sued Padgett in federal court. After taking discovery (including the deposition of Christo, Jr.), however, Miller dismissed the counts alleging an oral agreement because there was no credible evidence to support the theory.

Regretting their loss of what they believed to be the increasingly valuable Bay Bank stock, Petitioners decided to sue Padgett to recover the stock itself or, alternatively, the value of the stock less the $8.5 million that Padgett had paid for it. This suit was filed in Florida state court on November 12, 1997, either immediately before or (as Respondent contends) after the expiration of Florida's four year statute of limitations. *See* A-6 n.4.

Christo, Jr. was the lead plaintiff in the state court action. His joinder in this cause of action, which was owned by his bankruptcy estate, was in direct violation of the automatic stay of 11 U.S.C § 362(a)(3). In this action, Christo, Jr. was joined by his three children, one of whom, John Christo, III ("Christo, III"), was also subject to an order to cease and

desist from any involvement with a federally-insured bank. Like his father Christo, III had been convicted of criminal banking violations related to Bay Bank.

In pursuing their state court action, Petitioners were apparently unfazed by the fact that Christo, Jr.'s alleged agreement with Padgett would have been in direct violation of the cease and desist order entered by the Federal Deposit Insurance Corporation and of other banking regulations, by the fact that Christo, Jr. and Christo, III had avoided being held in contempt of court by sitting silently while Padgett denied under oath (under questioning from Christo, Jr.'s lawyers) that any such agreement existed, and that Christo, Jr. had failed to disclose the existence of this prospective asset in his bankruptcy schedules.

Padgett timely removed the state court action to federal district court. Removal was based, *inter alia*, upon 28 U.S.C. § 1334 (bankruptcy jurisdiction), 28 U.S.C. § 1367 (supplemental jurisdiction), and 28 U.S.C. § 1651 (the "All Writs Act"). In his notice of removal, Padgett alleged that Christo, Jr.'s attempt to recover estate assets for his own benefit violated the automatic stay in effect in Christo, Jr.'s bankruptcy case.

Realizing that at least Christo, Jr.'s interest in any cause of action against Padgett was property of Christo, Jr.'s chapter 7 estate, the Petitioners belatedly contacted Miller and requested that he abandon the cause of action against Padgett to them pursuant to 11 U.S.C. § 554 (permitting the trustee to abandon, after notice and a hearing, property that is of "inconsequential value" or is burdensome). Believing that there was no viable cause of action against Padgett, Miller filed a notice of his intention to abandon any such

action in compliance with the Petitioners' request and pursuant to 11 U.S.C. § 554. Padgett timely objected to the proposed abandonment alleging, *inter alia*, that abandonment would subject him to continued frivolous litigation.[3] Immediately after filing his objection, Padgett asked the United States District Court to withdraw reference of the abandonment dispute and requested that the bankruptcy court stay any proceedings on the merits of the abandonment dispute pending a ruling on the motion to withdraw the reference. *See* Bankruptcy Rule 5011(c). The bankruptcy court granted the motion for stay.

Shortly after receiving Padgett's objection to this notice of intention to abandon the cause of action to Christo, Jr., Miller filed an amendment and clarification of his notice of intention to abandon the cause of action against Padgett. Miller stated:

> Unbeknownst to the Trustee, the Debtor and his children have themselves filed an action against Padgett in November 1997 asserting the same theories advanced by the Trustee in Counts III and IV. The prosecution of this state court action, which either (a) was property of this estate or (b) had been fully litigated to final judgment, was obviously a violation of the automatic stay and an improper attempt to exercise control over property of this estate.

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3. The theory that Padgett was a straw man for Christo, Jr. had already been unsuccessfully advanced on three separate occasions (twice by SouthTrust and once by Miller) in the United States District Court for the Northern District of Florida.

The bankruptcy court never entered an order authorizing Miller's abandonment of the cause of action against Padgett, at least in part because Miller and Padgett entered into a settlement agreement that superceded Miller's motion to abandon. This settlement agreement, which was subject to approval of the bankruptcy court under Bankruptcy Rule 9019, provided, *inter alia*, for the payment of $15,000 to Miller and the release by Miller of all claims that he had against Padgett. One of the conditions of the settlement agreement was that Miller be determined to be the sole owner of any cause of action, to the exclusion of Christo, Jr.'s children. Miller and Padgett then filed a motion seeking court approval of the settlement agreement.

Petitioners filed an opposition in the bankruptcy court to the proposed settlement between Miller and Padgett. Petitioners raised two grounds: first, they alleged that Christo, Jr. had acted as an agent for his children in negotiating the agreement with Padgett and that, therefore, each member of the Christo family had an interest in any claim against Padgett. Second, Petitioners alleged that the settlement should not be approved because the cause of action against Padgett had substantial value. Thus, the Petitioners' objection in the bankruptcy court squarely presented the issues of (a) whether Miller, as the bankrupt trustee, was the sole owner of any cause of action against Padgett to the exclusion of any ownership interest of the Christo children and (b) whether any cause of action against Padgett was viable.

Following the filing of Petitioners' objection, the district court granted Padgett's motion to withdraw the reference from the bankruptcy court as to the abandonment dispute and the settlement dispute, including the points raised by

the Petitioners in their objection. The district court also notified each of the Petitioners that it would address the issues raised by Petitioners and hear evidence on "the identity of any and all parties who had an enforceable agreement with Kenneth Earl Padgett regarding the September 30, 1993 foreclosure sale of [Bay Bank] and/or any subsequent assignment of said company, or any interests therein, by Kenneth Earl Padgett." The trial lasted a full day, during which the district court heard sworn testimony and received documentary evidence from the Petitioners, the Respondent, Miller, and others.

On July 13, 1998, the district court entered an order determining that any claims arising out of any oral agreement belonged entirely to Miller, as Christo, Jr.'s successor in interest. The district court also determined that neither Christo, Jr. nor any of his family had a viable and enforceable claim against Padgett. The district court then referred all remaining issues to the bankruptcy court for its issuance of a report and recommendation on whether the settlement agreement should be approved.

On October 7, 1998, the bankruptcy court issued a report and recommendation urging that the settlement agreement be approved. On October 22, 1998, the district court adopted the bankruptcy court's report and recommendation.

While Miller and Padgett were dealing with the abandonment and settlement issues, the removed state court action proceeded forward. Among other things, Petitioners never filed or provided Respondent with the initial disclosures required by Rule 26(a)(1), Fed. R. Civ. P. In mid-1998, Respondent filed a motion for summary judgment and supporting affidavits. The district court took the motion for

summary judgment under advisement. On October 1 and 2, 1998, the district court entered a series of orders disposing of all pending motions in the litigation initiated by the Petitioners. Included within the orders was an order denying Petitioners' motion to remand and dismissing the removed action with prejudice.

Petitioners appealed to the Eleventh Circuit from orders entered in both the removed state action and in the bankruptcy action, and the Eleventh Circuit consolidated these appeals. The Respondent moved to dismiss the appeal, maintaining that the Petitioners lacked standing. *See Cult Awareness Network, Inc. v. Martino (In re Cult Awareness Network, Inc.)*, 151 F.3d 605 (7th Cir. 1998). After oral argument, the Eleventh Circuit entered the order appealed from. In that order, the Eleventh Circuit declined to hear the merits of the remand appeal and affirmed the district court in all other respects. A-2, 3. In light of this result, the Eleventh Circuit denied as moot Respondent's motion to dismiss the appeal. A-3, n.2.

REASONS FOR DENYING THE WRIT

I. THIS COURT LACKS JURISDICTION OVER THIS PROCEEDING UNDER ARTICLE III, § 2 OF THE UNITED STATES CONSTITUTION

Article III, § 2 of the United States Constitution confines federal courts to deciding "cases" and "controversies." Derived from this case and controversy requirement is the notion of standing, which is a threshold requirement for any suit brought in federal court. *Whitmore v. Arkansas*, 495 U.S. 149 (1990). In order for a putative plaintiff or appellant to have standing, he must show that he is asserting his own

legal rights rather than the rights of third parties. *Saladin v. City of Milledgville*, 812 F.2d 687 (11th Cir. 1987). In other words, the plaintiff or appellant must have a personal stake in the outcome in the litigation throughout its course. *Gollust v. Mendell*, 501 U.S. 115 (1991).

This Court stated in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, n.5 (1998), that the central question as to whether there is a "case" or "controversy" is "whether a plaintiff personally would benefit in a tangible way from the court's intervention."

The Petitioners do not have any personal stake in the outcome of this litigation. In fact, in Christo, Jr.'s chapter 7 case, the district court, sitting as a court of bankruptcy, determined that the cause of action set forth in Petitioners' state court complaint was owned solely by Miller, as trustee in bankruptcy for Christo, Jr. A-37. This ruling was affirmed by the Court of Appeals, which stated at A-25-26:

> Reviewing this record, there is simply no evidence that was ever an agreement between Padgett and anyone other than Christo, Jr. himself. Even though the Christo children would obviously have benefitted financially from Padgett's sale of Bay Bank to Union Planters, this, without more, does not confer on them the right to pursue a cause of action for breach of contract against Padgett. Because any cause of action would have belonged solely to Christo, Jr., that cause of action became property of the estate when he filed his petition for bankruptcy.

Petitioners do not now challenge the Eleventh Circuit's ruling that Miller owns any cause of action against Padgett.[4] Therefore, rather than asserting their own legal rights, the Petitioners are actually attempting to assert legal rights that belong to Miller, the chapter 7 trustee. This is so because, pursuant to 11 U.S.C. § 541(a)(1), the cause of action which belonged to Christo, Jr. prior to his filing of a chapter 7 petition became property of the estate. *Jones v. Harrell*, 858 F.2d 667 (11th Cir. 1988). As a result, it is only Miller, as the sole owner of all claims against Padgett, who has the requisite standing to assert any such action.[5] *See* 11 U.S.C. § 323; *Walton v. Weatly*, 986 F.2d 1423 (6th Cir. 1993) (holding that once a cause of action becomes part of the bankruptcy estate, the debtor loses any standing to sue); *Vreugdenhil v. Hockstra*, 773 F.2d 213 (8th Cir. 1985) (holding that unless a cause of action which becomes property of the bankruptcy estate is abandoned, only the trustee has standing to sue).

Finally, this Court has held that where a purported plaintiff lacked standing in an underlying lawsuit, he also lacks standing on appeal. *See Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997); *Marino v. Ortiz*, 484 U.S. 301 (1988). Simply put, because only Miller had standing to be a plaintiff in the underlying cause of action, Petitioners cannot satisfy the case and controversy and standing

4. Because the district court's factual finding that Miller owned the cause of action was based upon oral and written evidence, Petitioners would have had to demonstrate that the decision was "clearly erroneous." Rule 52(a), Fed. R. Civ. P. A challenge to this type of factual finding would not generally support this Court's grant of a writ of certiorari under Rule 10.

5. Miller, of course, does not complain of the district court orders and has instead settled his claims against Padgett.

requirements under Article III, § 2 of the United States Constitution. The Petitioners' lack of standing deprives this Court of jurisdiction.

II. THIS COURT LACKS JURISDICTION TO REVIEW THE DISTRICT COURT'S REFUSAL TO REMAND *CHRISTO v. PADGETT* TO STATE COURT

Independent of the "case or controversy" problem, this Court has no jurisdiction over the first issue presented by Petitioners. Although Petitioners contend that this Court has jurisdiction pursuant to 28 U.S.C. § 1254(1), they fail to note that jurisdiction under § 1254 was expressly circumscribed from 1990 through 1994 by 28 U.S.C. § 1334(c)(2) and from 1990 to date by 28 U.S.C. § 1452(b).

The prior version of 28 U.S.C. § 1334(c)(2) in effect when Christo, Jr. filed his bankruptcy case provided that a decision of the district court to abstain or *not to abstain* was not reviewable "by appeal or otherwise" by the court of appeals or by the Supreme Court of the United States. 28 U.S.C. § 1334(c)(2) (1994). Based upon this statutory language, the Eleventh Circuit concluded that it lacked jurisdiction to review the district court's decision not to abstain and not to remand the state court case under the mandatory abstention theory urged by Petitioners. A-10-13. The Eleventh Circuit also found that, under the version of 28 U.S.C. § 1452(b) that was in effect in 1994 and that continues unaltered to date, there could be no appellate review of any decision not to remand a case based upon permissive or equitable grounds. A-9, n.8. *See* 28 U.S.C. § 1452 (2000).

Petitioners do not appear to challenge the correctness of the Eleventh Circuit's analysis of 28 U.S.C. § 1334(c)(2) (1994) and 28 U.S.C. § 1452(b) (2000). See Petition, at 20. For the same reason that the court of appeals lacked jurisdiction to review the district court's order denying remand, this Court lacks jurisdiction to review that order under 28 U.S.C. § 1254.

III. THE DISTRICT COURT DID NOT ADDRESS THE MERITS OF THE STATE ACTION BEFORE IT HAD SATISFIED ITSELF OF ITS JURISDICTION OVER THE SUBJECT MATTER, AND THE ELEVENTH CIRCUIT NEVER EVEN ADDRESSED THIS ISSUE

As noted above, only Miller has standing to raise this issue. In any event, this issue neither presents an important federal question nor creates a conflict between the Eleventh Circuit's opinion and this Court's decisions. Indeed, the Petitioners' entire premise, that the district court reached the merits of the dispute prior to resolving its jurisdiction to do so, is simply factually incorrect, as further discussed below. The Eleventh Circuit never addressed this issue because it found that it lacked jurisdiction to do so. A-10-13.

The district court found that it had subject matter jurisdiction and denied the Petitioners' motion to remand *Christo v. Padgett* to the state court in an unpublished order dated October 1, 1998.[6] After first determining that it had

6. That the district court had subject matter jurisdiction under 28 U.S.C. § 1334 over the removed state court action has never been seriously questioned. *See Celotex Corp. v. Edwards*, 514 U.S. 300 (1995); *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (Cont'd)

jurisdiction, the district court granted Respondents' motion to dismiss the complaint on the merits. A-39-57. Petitioners criticize the court of appeals for "permitting the district court to rule on the merits on the State Action before it had satisfied itself of its jurisdiction over the subject matter." Petition, at 13. It is evident from the October 1, 1998 order, however that the district court *did not* decide the merits before addressing its jurisdiction to do so. To the contrary, in its September 30, 1998 order the district court first found that it had jurisdiction and declined to remand the action. A-39-57. Thereafter, in the same September 30, 1998 order, the district court dismissed the Petitioners' complaint based at least in part upon principles of issue preclusion. A-39-57. Indeed, the Petitioners appear to concede that the district court did in fact make a determination as to whether it had jurisdiction. Petition, at A-12.

The district court's procedure was entirely correct. This is not a case in which the district court exercised "hypothetical jurisdiction" to issue an advisory opinion by dismissing *Christo v. Padgett* on the merits without ever making a determination as to whether it had jurisdiction to do so. Petitioners' reliance on this Court's opinion in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998) and the Fifth Circuit's opinion in *Southmark Corp. v. Coopers & Lybrand, (In re Southmark Corp.)*, 163 F.3d 925 (5th Cir. 1999) is thus misplaced. The district court complied exactly

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(holding that any civil proceeding is "related to" a bankruptcy case and therefore within the jurisdiction of the federal courts if "the outcome of that proceeding could conceivably have any effect upon the estate being administered in bankruptcy"). The district court also found that it had jurisdiction under 28 U.S.C. § 1367(a) and 28 U.S.C. § 1651(a).

with *Steel Co.'s* suggestion that the question of subject matter jurisdiction be addressed at the outset of the opinion rather than at the end. In any event, as this Court stated in *Steel Co.*, where Article III standing is eventually found the issue as to the timing of such determination is irrelevant. *Steel Co.*, at 91.[7]

Although it is unclear from the Petition, the Petitioners may contend that the district court erred by ruling on the issues raised in the *bankruptcy* case by the motion to compromise and by the Petitioners' objection thereto before it had ruled on the jurisdictional issues in the removed *civil* action. Because the factual determinations made in the bankruptcy case ultimately precluded further re-litigaiton by the Petitioners, the Petitioners may be suggesting that the district court implicitly ruled on the merits of the then-pending motion to dismiss the removed civil action without having ruled on the Petitioners' motion to remand. Petitioners cite no authority for the proposition that a district court having before it two related cases, one arising in a bankruptcy case and one arising in the civil context, must decide one of those pending cases before the other. The fact that the resolution of one case might affect the other, or indeed entirely dispose of the other case, presents no jurisdictional issue.

Petitioners do not suggest that the district court lacked bankruptcy jurisdiction to hold hearings on the motion to compromise and the Petitioners' objection thereto filed in the bankruptcy case. There was no challenge to the district

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7. Likewise, although the Fifth Circuit stated in *Southmark* (in language quoted by Petitioners) that the lower court should first have considered its jurisdiction before reaching the merits, 163 F.3d at 929, it affirmed because it found that jurisdiction existed. *Id.* at 932, 935.

court's jurisdiction to rule on the bankruptcy settlement, and the district court satisfied itself of its jurisdiction to approve the motion to compromise — a garden variety motion filed hundreds of times each day in bankruptcy courts around the country — and to dispose of the Petitioners' objections thereto. Unfortunately for the Petitioners, the resolution of the matters in the bankruptcy case had an adverse and dispositive impact on their rights in the pending civil action. This preclusive result, however, would have been the same whether the civil action had been pending in state court or federal court.

Several other points are worth noting. Because the district court clearly did have subject jurisdiction over both the bankruptcy case and the removed civil action under the "arising in" or "related to" jurisdictional grants of 28 U.S.C. § 1334, any perceived failure of the district court to timely address these issues would have been "harmless error" at most. Finally, the district court's unpublished decision does not and could not create any conflict with any decision of this Court or any court of appeals.

In any event, the Eleventh Circuit never reached the issue raised by Petitioners in their first point. As noted earlier, the Eleventh Circuit found, based upon an historical anomaly arising from a prior version of 28 U.S.C. § 1334(c)(2) that is not applicable to bankruptcy court cases filed after November 1994, that it lacked jurisdiction to consider this issue. Needless to say, the primary case relied upon by Petitioners, *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), is not even mentioned by the Eleventh Circuit, and there is no apparent conflict between the Eleventh Circuit's decision and this Court's decision in *Steel Co.* The other decision primarily relied upon by Petitioners to create a

conflict between the circuits is *Southmark Corp. v. Coopers & Lybrand, (In re Southmark Corp.)*, 163 F.3d 925 (5th Cir. 1999). The Eleventh Circuit, however, did not disagree with *Southmark*, but rather cited *Southmark* twice with approval, albeit on somewhat different issues. A-10; A-13. There is simply nothing in the published decision of the Eleventh Circuit that would suggest any conflict at all with the authority cited by Petitioners, much less any conflict that would warrant the discretionary review of this Court.

IV. THE ELEVENTH CIRCUIT'S OPINION AFFIRMING THE DISTRICT COURT'S DISMISSAL OF THE PETITIONERS' STATE LAW ACTION IN WHICH A JURY TRIAL WAS REQUESTED DID NOT DECIDE AN IMPORTANT FEDERAL QUESTION IN A WAY CONFLICTING WITH DECISIONS OF THIS COURT

As a threshold matter, Respondent must again observe that only Miller has standing to raise this issue. Regardless of Petitioners' standing and this Court's jurisdiction, however, it is clear that the Eleventh Circuit's unremarkable and correct application of elementary principles of issue preclusion and the law related to summary judgments does not warrant this Court's discretionary review.

The district court dismissed *Christo v. Padgett* by applying principles of issue preclusion and alternatively noted that the Respondent was entitled to summary judgment. A-56. The Eleventh Circuit affirmed on each of these alternative bases. A-31-32. The Eleventh Circuit summarily disposed of Petitioners' suggestion that their request for a jury trial precluded a grant of summary judgment by citing to the Restatement (Second) of Judgments.

It is noteworthy that the Petition fails to cite or discuss any of the cases relied upon by the Eleventh Circuit and the district court in dismissing the complaint in *Christo v. Padgett*, while the Eleventh Circuit opinion and the district court decision do not discuss or cite any of the cases cited by Petitioners for the proposition that there is a conflict justifying the discretionary review of this Court. For example, Petitioners argue that the Eleventh Circuit's opinion creates a conflict with a series of decisions with this Court dealing with the propriety of an order granting summary judgment. *See Hunt v. Cromartie*, 526 U.S. 541 (1999); *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Fidelity & Deposit Co. of Maryland v. United States*, 187 U.S. 350 (1902). Neither the Eleventh Circuit's opinion nor the district court's opinion stated any proposition that conflicted with the holdings in any of those cases.

This is not a case in which the Seventh Amendment applies because the bankruptcy case in which the dispositive evidentiary rulings were made was not a "suit at common law." *Granfinciera S.A. v. Nordberg*, 492 U.S. 33 (1989). Furthermore, Petitioners did not request a jury trial in their objection to the bankruptcy trustee's motion to approve the settlement and never asserted that they were entitled to a jury trial before or during the June 30, 1998 trial. Petitioners thus waived any right to a jury trial by not objecting to the district court hearing this dispute without a jury. *See, e.g., Langenkamp v. Culp*, 498 U.S. 42 (1990).[8]

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8. Moreover, it was the Petitioners in fact that originally invoked the equity jurisdiction of the bankruptcy court. Christo, Jr. filed the voluntary petition initiating the case, and all of the Petitioners thereafter requested that the trustee abandon the cause of action (Cont'd)

It is clear that the Eleventh Circuit opinion raises no important Seventh Amendment or other federal questions. Certainly the Eleventh Circuit's opinion creates no conflict with this Court's decisions or the decisions of other circuit courts.

CONCLUSION

In conclusion, the Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari. The courts below were correct in their result. The Eleventh Circuit opinion does not raise any important federal questions and creates no conflict with decisions of this Court or other circuits.

Respectfully submitted,

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against Padgett to them. The resulting abandonment dispute was a "core proceeding" under 28 U.S.C. § 157(b) which was clearly equitable in nature. Likewise, the trustee's motion to compromise and the Petitioners' objection thereto were within the core jurisdiction of the bankruptcy court and also clearly equitable in nature.